

REMARKS

Claims 1-44 are pending in this application. Claims 24-27 and 30-43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention. There are four independent claims currently undergoing examination: claim 1 is an apparatus claim directed to a container for use with a phototreatment device; claim 22 is directed to a method of operating a phototreatment device; claim 28 is directed to a phototreatment device; and claim 44 is directed to a method of operating a phototreatment device to treat dermatological conditions.

Claims 1, 3-5, 7, 8, 10, 11 and 15-23 are rejected under 35 USC § 102(b) as being anticipated by Baronov. Claims 1-10, 15 and 17-23 are rejected under 35 USC § 102(b) as being anticipated by Reuter. Claims 28, 29 and 44 are rejected under 35 USC § 102(b) as being anticipated by Hohla. Claims 1, 2 and 12-14 are rejected under 35 USC § 103(a) as being unpatentable over Desai. Claim 20 is objected to under 37 CFR 1.75(c) as being of improper dependent form.

Each of the independent claims 1, 22, 28 and 44 have been amended. Dependent claims 11, 21, and 29 have also been amended. Claim 20 has been canceled. New dependent claims 45-53 have been added. While Applicants believe that the originally presented claims are patentable over all of the art cited in the Office Action as well as all other references submitted by Applicants, the claims have nonetheless been canceled and amended as follows in order to expedite the application toward allowance. The cancellation and amendments are therefore made without prejudice or disclaimer, and Applicants reserve the right to pursue the original scope of the claims as provided prior to the amendments, such as through continuation practice.

Support for the claim amendments can be found throughout the specification and in the claims as originally filed. Specifically, the amendments to claims 11 and 21 are merely to provide proper antecedent basis and claim dependency, respectively. Support for the amendments to claims 1 and 22, and specifically for the phrases “an indicator coupled to the container”, “wherein the indicator is capable of being detected by the indicator detector system so as to determine an aspect of the container”, and “evaluating

the indicator to determine an aspect of the container” can be found on page 3, lines 15-25, and page 27, line 21 – page 28, line 21. Support for the amendments to claims 28 and 29, and specifically for the phrase “a substance including a marker” can be found on page 4 lines 22-23. Support for the amendment to claim 44, and specifically for the phrases “treatment of dermatological conditions” and “skin tissue” can be found on page 1, lines 13-17, page 3 lines 5-9 and page 17, lines 29-30. Support for new claims 45-48 can be found on page 13, line 28; page 3, lines 9-11 and 21-22; page 27, line 26 – page 28, line 6; and page 26, line 1 – page 27, line 20. Support for new claims 49 and 50, and specifically for the phrases “a container connector for coupling the container to the phototreatment device” and “wherein the container connector is a fluid conduit” can be found on page 26, line 1 – page 27, line 20. Support for new claims 51-53 can be found on page 33, lines 8-32. Accordingly, no new matter has been added by the proposed amendments.

Applicants respectfully traverse the Examiner’s rejections and request reconsideration of the application in view of the amendments made above and the remarks that follow.

Objection under 35 CFR 1.75(c)

Claim 20 is objected to 35 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicants have cancelled claim 20 rendering this objection moot.

Rejections under 35 U.S.C. § 102(b)

Claims 1, 3-5, 7, 8, 10, 11 and 15-23 are rejected under 35 USC § 102(b) as being anticipated by Baronov (U.S. Pat. No. 6,059,820). Based on the amendments and the following remarks, Applicants respectfully request reconsideration and withdrawal of the anticipatory rejections.

Applicants’ invention discloses replaceable containers comprising one or more consumable or re-useable substances that are configured for coupling to cosmetic phototreatment devices. An important feature of the claimed invention provides *an*

indicator coupled to the container, wherein the indicator is capable of being detected by an indicator detector system so as to *determine an aspect of at least one of the container and the substance*. Applicants' specification describes various aspects that the indicator is capable of indicating, for example, the amount of substance in the container, temperature of the container or substance, identity of the of container or substance, and/or activity of the substance. (See Specification pg 3, lines 21-22; pg 27, lines 26-32; pg 28, lines 1-6). In addition, the indicator of the present invention can provide a safety mechanism that ensures that a proper consumable substance and/or container is connected to the phototreatment device and/or directed to a proper target. (See Specification pg 3, lines 9-11).

Baronov discloses a laser treatment device having a tissue cooling rod and a cryogenic container that provides cryogenic spray for cooling the rod. The temperature of the rod, or the surface of the patient's skin, are "monitored with a thermocouple which provides a feedback signal to a processor which controls the cooling and the laser power." (See Col. 1, lines 60-62; Col. 2, lines 35-39).

The Baronov reference does not teach or even suggest a replaceable container for a phototreatment device having *an indicator coupled to the container* wherein the indicator is capable of determining *an aspect of at least one of the container and the substance*, as recited in independent claims 1 and 22, and claims dependent thereto. In contrast, the thermocouple of the Baronov device merely detects the temperature of the rod or the skin.

Because Baronov does not disclose or teach the recited limitations of the claimed invention, Applicants believe that Baronov does not anticipate, or render obvious, the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 3-5, 7, 8, 10, 11 and 15-23.

Claims 1-10, 15 and 17-23 are rejected under 35 USC § 102(b) as being anticipated by Reuter (U.S. Pat. No. 6,436,094). Based on the amendments and the following remarks, Applicants respectfully request reconsideration and withdrawal of the anticipatory rejections.

Reuter discloses an apparatus for lowering the temperature of the skin on a patient during treatment with electromagnetic energy. (Col.2, lines 63-64). The Reuter apparatus consists of an energy delivery device and a cooling device. (Col.3, lines 44-45). The cooling device consists of a cooling window surrounded by thermally conductive material that absorbs and conducts heat from a patient's skin to a thermal reservoir contained within the cooling device. (Col.3, line 52–Col.4, line 15).

Reuter fails to teach or even suggest a container, an indicator *coupled to the container*, wherein the indicator can *determine an aspect of at least one of the container and the substance*, as recited by amended independent claims 1 and 22, and the claims dependent therefrom. The sole reference to an indicator in Reuter is to a temperature sensor placed in thermal contact with the window so as to indicate a change in the temperature of the skin. (Col. 5, lines 38-42). There is no teaching or suggestion of an indicator coupled to *the container* for determining *an aspect of at least one of the container and the substance* as in the claimed invention. Further, while the Reuter apparatus discloses a control device responsive to the temperature sensors for adjusting the flow of coolant, Reuter does not disclose a safety mechanism which *enables operation of the phototreatment device if the evaluation of the indicator is acceptable*, as recited in independent claim 22.

Because Reuter does not disclose or teach the recited limitations of the claimed invention, Applicants believe that Reuter does not anticipate, or render obvious, the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-10, 15 and 17-23.

Claims 28, 29 and 44 are rejected under 35 USC § 102(b) as being anticipated by Hohla. Based on the amendments and the following remarks, Applicants respectfully request reconsideration and withdrawal of the anticipatory rejections.

Hohla relates to “an apparatus for surgically modifying the curvature of the eye cornea and a method of controlling the apparatus.” (Col. 1, lines 11-13). Hohla discloses a system and method for removal of the eye epithelium (e.g. a layer of cells that cover the surface of the cornea) using laser ablation. (Col.4, lines 20).

In contrast, the claimed invention discloses a phototreatment device for use on *skin* tissue for treatment of *dermatological* conditions, as recited in amended independent claims 28 and 44, and the claims dependent therefrom. Thus, the teachings of Hohla do not anticipate the claimed invention.

Because Hohla does not disclose or teach the recited limitations of the claimed invention, Applicants believe that Hohla does not anticipate, or render obvious, the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection over Hohla.

Rejections under 35 U.S.C. § 103(a)

Claims 1, 2 and 12-14 are rejected under 35 USC § 103(a) as being unpatentable over Desai. Applicants respectfully disagree with these rejections. Based on the following remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims.

Desai discloses methods and apparatus for interstitially injecting treatment fluid with a needle guided to a target tissue using minimally invasive endoscopic instruments or non-invasive imaging techniques. (Col.1, lines 13-19). The apparatus for guiding the needle can be used to treat cancer through delivery of a treatment fluid contained in a syringe (34) that is coupled to the apparatus. (Col. 5, lines 15-34). Once the fluid is injected into the body, radiation can be applied through a separate energy source. (Col. 11, lines 15-26).

As conceded by the Examiner, Desai fails to disclose an *indicator coupled to the container*. In addition, the Desai reference neither teaches nor suggests a container configured for replaceable *coupling to a phototreatment device* having an indicator detector system and an indicator coupled to the container, wherein the indicator is capable of being detected by the indicator detector system so as to *determine an aspect of at least one of the container and the substance*, as recited in amended independent claim 1, and the claims dependent therefrom. Since, Desai fails to disclose many of the features of amended independent claim 1, it would not have been obvious for one skilled in the art to simply modify the cancer treating Desai apparatus for use in phototreatment.

Since Desai does not disclose or teach the salient features of amended claim 1, and dependent claims 2 and 12-14, Applicants believe that Desai does not anticipate, or render obvious, the claimed invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 2 and 12-14.

New Claims

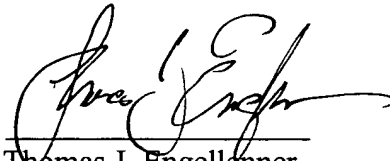
New dependent claims 45-53 have been added. Support for the new claims can be found throughout the specification as originally filed. Accordingly, no new matter has been added by the proposed new claims.

CONCLUSION

In summary, the above-identified patent application has been amended and reconsideration is respectfully requested for all the reasons set forth above. In the event that the amendments and remarks are not deemed to overcome the grounds for rejection, the Examiner is kindly requested to telephone the undersigned representative to discuss any remaining issues.

Respectfully submitted,

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